

REMARKS

Claim 10 is cancelled. New Claim 13 has been added. Accordingly, Claims 1-9 and 11-13 are pending.

A 37 § 1.132 Declaration accompanies this Amendment. The Declaration is not executed. An executed copy will be filed shortly.

Amendment to the Specification

The specification has been amended to move the Brief Description of Drawings section after the Summary of the Invention.

Rejection under 35 U.S.C. § 112, second paragraph

Claims 1-9 have been rejected under 35 U.S.C. § 112, second paragraph, because the Examiner states that “it is unclear whether the foodstuff has been subjected to heat or shear...” (Office Action page 2, paragraph 2.)

Claim 1 has been amended to add that the foodstuff is subjected to heat and/or shear treatment. Accordingly, this rejection has been obviated.

Rejection under 35 U.S.C. § 102(b)

Claims 1-9 and 11-12 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP 0 796 868 (Jeffcoat et al.). (Office Action page 3, paragraph 5.)

The present invention is an improved foodstuff which comprises a cross-linked starch. The starch is cross-linked to such an extent that it has the capacity to disintegrate into discrete particles after processing, i.e. after heat and/or shear treatment. Due to this capacity, after processing, the foodstuff has the desirable characteristics of having a short or smooth texture and/or shiny appearance.

In contrast, Jeffcoat et al. do not disclose starch that has the capacity to disintegrate into discrete particles after processing. Accordingly, the food products obtained by using the starch described by Jeffcoat et al. have different characteristics than the food products of the present invention.

A 37 § 1.132 Declaration accompanies the present Amendment in order to further demonstrate the disparate characteristics of the food products of the present invention vis-à-vis the food products disclosed by Jeffcoat et al.

Starch prepared according to the description of Jeffcoat et al. is documented in the Declaration. See page 3 of the Declaration. The Declaration also documents the characteristics of food products prepared from the Jeffcoat et al. starch vis-à-vis the same food products prepared from the starch of the present invention.

In particular, on page 4, the preparations of puddings are described. The pudding prepared using the Jeffcoat et al. starch is said to be “duller” than the pudding prepared from the starch of the present invention. Photographs of the two puddings are shown on page 5 of the Declaration. In comparing the photographs, the Declaration states that “[i]t was clearly visible by visual inspection of the pudding surfaces that there was a marked difference in gloss and shininess between the two puddings...” The photograph of the pudding prepared by the present invention also shows “discrete starch particles” vis-à-vis the photograph of the pudding prepared from the Jeffcoat et al. starch which does not show such particles. See Figure 2.

Additionally, on page 6, the preparations of a fruit pie fillings are described. The filling prepared using the Jeffcoat et al. starch is said to be “duller” than the filling prepared from the starch of the present invention. Photographs of the two fillings are shown on page 7 of the Declaration. In comparing the photographs, the Declaration states that “[i]t was clearly visible by visual inspection of the two fruit pie fillings surfaces that there was a marked difference in gloss and shininess between the two fruit pie fillings...” The photograph of the

filling prepared by the present invention also shows “discrete starch particles” vis-à-vis the photograph of the filling prepared from the Jeffcoat et al. starch which does not show such particles. See Figure 4.

Independent Claim 1 of the present application recites a method for providing an improved foodstuff which comprises a cross-linked starch. The starch is recited as having the capacity to disintegrate into discrete particles processing, i.e. after heat and/or shear treatment. After such processing, the foodstuff has a short or smooth texture and/or shiny appearance. Since Jeffcoat et al. do not disclose methods of producing food products that contain starch that has this capacity, Jeffcoat et al. cannot anticipate Claim 1, or its dependent claims.

Independent Claim 11 recites a foodstuff which has a short or smooth texture and/or shiny appearance after heat and/or shear treatment comprising a cross-linked starch which has a capacity to disintegrate into discrete particles after processing. Since Jeffcoat et al. do not disclose starch that has this capacity, Jeffcoat et al. cannot anticipate Claim 11, or its dependent claims.

New independent Claim 13 recites an improved foodstuff which is produced by the methods of this invention.

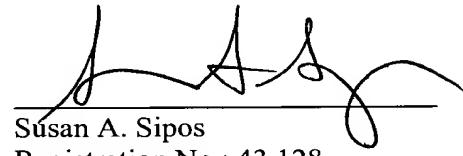
Obvious Type Double Patenting Rejection under 35 U.S.C. §101

The Examiner has provisionally rejected Claims 1-9 and 11-12 under the judicially created doctrine of obvious type double patenting in view of co-pending Application Serial No. 10/236,435.

Application Serial No. 10/236,435 has not yet been allowed. Once such application is allowed, Applicants will consider filing a terminal disclaimer which would ensure that the patent term of any patent that may issue from the present application would not extend beyond the term of any patent issued from Application Serial No. 10/236,435.

Applicants respectfully submit that the application is in proper form for allowance which action is earnestly solicited. If resolution of any remaining issue is required prior to allowance of the application, it is respectfully requested that the Examiner contact Applicants' undersigned attorney at the telephone number provided below.

Respectfully submitted,



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